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In re Application of
Maurice
Application No. 09/520,197
Filed: February 25, 2000
Attorney Docket No. RCA 88441A

OFFICE OF PETITIONS
ON
PETITION

This is a decision on the reconsideration petition filed September 18, 2002 (postcard receipt date June 30, 2000), to accord the above-identified application a filing date of February 25, 2000.

On February 25, 2000, the application was deposited.

On May 17, 2000, the Office of Initial Patent Examination mailed a Notice stating that the specification and at least one claim were missing and that a filing date would be accorded upon receipt of the missing items.

In response, the present petition alleges that the specification, claims, and drawings were inadvertently omitted. However, the Utility Patent Application Transmittal sheet incorporated by reference the entire disclosure of the parent application. The petition states that the specification, claims, and drawings in the parent and divisional are identical.

The Office allows an applicant to rely upon an incorporation by reference of a parent application when a portion of the child application has been inadvertently omitted.

Based on the incorporation by reference, it appears that the specification and drawings were present in the Office on February 25, 2000, albeit in the file of another application, i.e., application No. 08/737,192. Therefore, on petition, the application may be accorded the requested filing date of February 25, 2000.

In view of the above, the petition is **granted**. The copy of the specification, drawings and claims submitted with the petition will be used for examination purposes.¹

Regarding finances, because the Office did not have a record of receiving the June 30, 2000 petition, the Office terminated proceedings and refunded the filing fee minus a \$130.00

¹ The Office assumes that the specification, drawings, and claims are a true and exact copy of the specification, drawings, and claims submitted in the parent application. If this is not the case, then petitioner must notify the Office. Of course, the primary examiner is expected to compare the instant specification and drawings to the disclosure of the parent application in order to verify that the specification and drawings are, in fact, parts of the disclosure of the prior application.

processing and handling fee. Petitioner has provided the Office with evidence that the petition was timely filed on June 30, 2000. Proceedings on the application should not have been terminated. Therefore, pursuant to petitioner's authorization, the \$690.00 filing fee will be charged to deposit account no. 07-0832. The retention and handling fee will be recoded in Office financial records as the \$130.00 petition fee for the instant petition. The \$130 petition fee will not be refunded since the petition was required to accord the application the requested filing date. It is noted that petitioner was charged \$130.00 on July 25, 2002, but the money was allocated to another application. Petitioner will be refunded \$130.00.

Regarding the petition to revive under 37 CFR 1.137(b) cited in the July 25, 2002 decision, a further review of the document in question reveals that it was misplaced in this application file. No petition to revive has been filed in this case. Therefore, the decision of July 25, 2002 is **vacated** insofar as it addresses the misplaced petition to revive.

The Application is being returned to the Office of Initial Patent Examination for further processing with a filing date of February 25, 2000, using the application papers filed on February 25, 2000 the copy of the specification, drawings, and claims filed on September 18, 2002 (postcard receipt date June 30, 2000).

Telephone inquiries should be directed to the undersigned at (703) 308-6712.


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